IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

Bail Appl..No. 6689 of 2007()

CRLMP.3436/2007 of D.C. & SESSIONS COURT,KOLLAM
CRIME NO.357/07 OF KADAKKAL POLICE STATION.

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PETITIONER/3RD ACCUSED

N.SABU,S/O.NADARAJAN, AGED 47
RESIDING AT ISWARYA, KOTTAPPURAM,
ELAMPAZHANNOOR P.O. KADAKKAL, KOLLAM.

BY ADV. SRI.HARISH GOPINATH

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
SUB INSPECTOR OF POLICE, KADAKKAL POLICE STATION
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6689 OF 2007

Dated this the 6th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner is the 3rd accused. He faces allegations along with the co-accused in a crime registered, inter alia, under Secs.420 and 468 of the IPC. The de facto complainant's daughter and son-in-law are accused 1 and 2. The crux of the allegations against the accused persons is that they colluded together and brought into existence an assignment deed under which the de facto complainant, his wife and two deceased sons of his are shown to have assigned their rights in favour of the petitioner/the 3rd accused. The de facto complainant was the original owner of the property. He had executed a settlement deed in favour of the two sons of his reserving to himself and his wife life estates. Accused 1 and 2 had allegedly in collusion with the

petitioner herein/the 3rd accused clandestinely obtained the original title deed from the possession of the de facto complainant and had executed a forged false document purported to be executed by the de facto complainant, his wife and his two deceased children. The 3rd accused, thus, claims rights over the property now. Investigation is in progress. The petitioner apprehends imminent arrest.

2. Accused 1 and 2 had come before this Court with a prayer for anticipatory bail and by order dated 26/9/07 in B.A.No.5730/07 the said prayer was rejected.

3. The learned counsel for the petitioner submits that the petitioner should not be equated with accused 1 and 2 in the matter of grant of anticipatory bail. He submits that the petitioner is a bona fide purchaser. He had taken assignment on payment of valid consideration and got the genuine title deed executed in his favour. In these circumstances, he, who had taken all necessary safeguards made and bona fide enquiries before effecting the purchase, may not be subjected to the trauma of undeserved arrest and detention. Anticipatory bail may be granted, it is submitted.

4. The learned Public Prosecutor stoutly opposes the application for anticipatory bail. The learned Public Prosecutor

submits that all the indications presently available point to the culpable involvement of the petitioner also in bringing about the document in question. His claim that he is a bona fide purchaser cannot evidently be accepted as the alleged two executants were dead long prior to the execution of the document. The learned Public Prosecutor further submits that the indications galore to suggest that the petitioner had contumacious and culpable knowledge and involvement of the fraud and the crime committed. At any rate, the investigation is at very sensitive stage now. The persons who impersonated the de facto complainant, his wife and his two deceased male children will have to be identified. The petitioner will have to be exhaustively interrogated to ascertain the truth. At this stage of the proceedings the petitioner does not deserve to be permitted to arm himself with an order of anticipatory bail. Such an order would hamper the smooth course of the investigation. The petitioner may be directed to co-operate with the Investigators and surrender before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course.

5. The Case Diary has already been perused by me. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am unable to

perceive any features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. I am not embarking on a detailed discussions about the inputs available, lest it might prejudice the interests of the parties at later stages. Suffice it to say that I agree with the learned Public Prosecutor that this is a fit case where the petitioner must surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

6. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge